

REMARKS

The Official Action of March 5, 2004 has been carefully considered and reconsideration of the application as amended is respectfully requested.

Claim 1 has been amended to remove the recitation that the Examiner considers not to have been adequately described in the specification as filed, namely the recitation that the candidate materials are non toxic to humans. The removal of this recitation removes the basis for the rejection under 35 USC 112, first paragraph.

Claim 1 has also been amended to clarify that the term "initial phase of the testing" refers to a period in which at least one of the rodents survives the testing (see specification at page 3, lines 11-14, and page 10, first full paragraph), whereby to remove the basis for the rejection of this term under 35 USC 112, second paragraph. Claim 38 has been amended to remove the basis for the rejection under 35 USC 112, second paragraph, of the term "predetermined". Claim 39 has been amended to recite that all of the rodents survive the initial testing period in accordance with the disclosure in the specification at page 16 lines 15-16. All claims as amended are believed to be sufficiently definite to satisfy the dictates of 35 USC 112, second paragraph.

Claims 1-6, 10-14, 38 and 39 were rejected under 35 USC 102(b) as allegedly being anticipated by or, in the alternative, under 35 USC 103(a) as allegedly being unpatentable over Henshaw. Claims 1-6, 10-14, and 37-39 were rejected under 35 USC 103(a) as allegedly being unpatentable over Takashi and Henshaw in view of NCI '76. Applicant respectfully traverses these rejections.

The claimed invention is based upon Applicant's discovery that, under laboratory conditions, i.e., free of predators and confined, rats fed *ad libitum* with cellulosic materials lose weight in an initial phase of testing and then recover and survive the testing (specification at page 3, lines 11-14). Surprisingly, these cellulosic materials, which are not effective in killing rats under laboratory conditions, may nevertheless be effective as rodenticides in the field (specification at page 1, lines 17-18). Accordingly, it is possible to select suitable candidate materials for potential rodenticidal activity in the field during an initial phase of testing without killing the laboratory rats being tested. Indeed, the claimed invention requires the selection of the candidate materials during this initial phase with at least one of the plurality of rodents surviving.

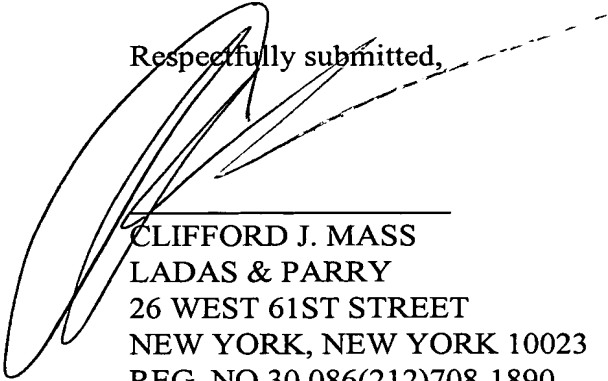
The claimed invention is not shown or suggested in the cited art. Henshaw teaches that the test for rodenticidal effect is the death of all of the tested rodents (see, e.g., Henshaw at page 5, lines 5-7, and Table II on page 6). Accordingly, Henshaw does not teach, and in fact teaches away from, the claimed step of selecting a candidate material during an initial phase of testing wherein some or all of the tested rodents are surviving.

The combination of three citations posited by the Examiner would teach one of skill in the art to vary dosage levels and possibly the rodenticidal material in order to determine the dosage of a particular rodenticidal material needed to kill the test rodents, but would not lead the skilled artisan to employ weight loss during an initial phase of testing, prior to the death of all rodents, as a criterion for selecting a candidate rodenticidal material.

Thus the NCI '76 reference is concerned with determination of the lethal dose and the criterion for selecting the LD₅₀ dosage is (by definition) death. The claimed invention is concerned with the selection of a candidate rodenticide which is likely to be effective in the field and utilizes weight loss in an initial phase as the selection criterion. This criterion is not taught by way of the citations (the mere observation of weight loss does not amount to selection on the basis of weight loss rather than death), and the invention has the advantage over the combination of citations that candidate materials which do not kill laboratory rats but which may kill rats in the wild can be identified.

In view of the above, it is respectfully submitted that the cited references, either alone or in combination, do not show all features of the invention as claimed and accordingly do not set forth even a *prima facie* case of obviousness. Accordingly, it is respectfully submitted that all rejections and objections of record have been overcome and that the application is now in allowable form. An early notice of allowance is earnestly solicited and is believed to be fully warranted.

Respectfully submitted,



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